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IN THE

Supreme Court of the United States

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM H. SPRAGUE AND
WILLIAM J. HOWEY,
} No. 606

BRIEF AS AMICUS CURIAE

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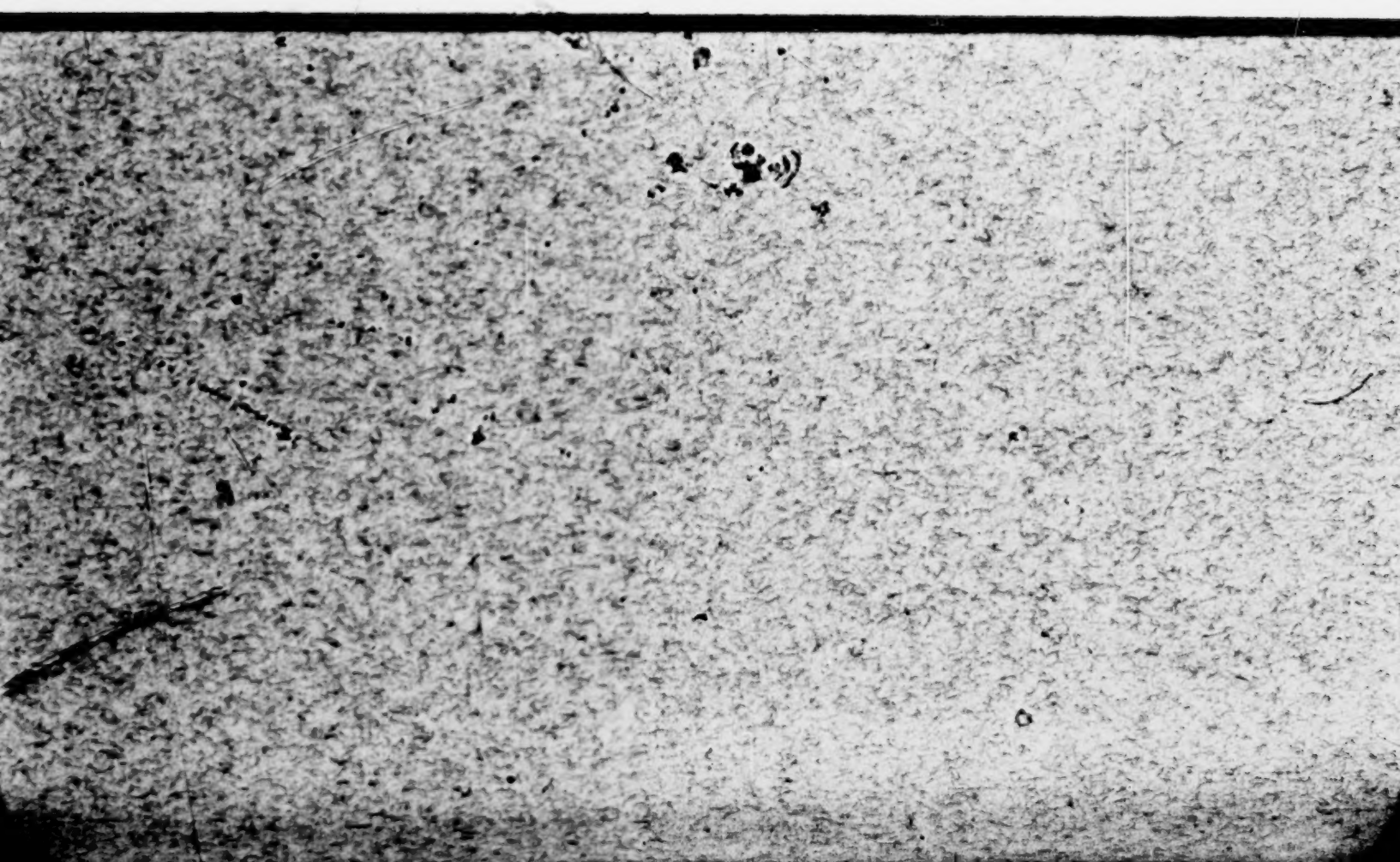

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1930

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM H. SPRAGUE AND
WILLIAM J. HOWES,
No. 606

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

May it please the Court:

The undersigned respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

WILLIAM H. CRICHTON-CLARKE,
As Amicus Curiae.

IN THE

SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM H. SPRAGUE AND
WILLIAM J. HOWEY,
} No. 606

BRIEF AS AMICUS CURIAE

May it please the Court

The question presented for decision is whether or not Congress possesses the right finally, conclusively and even erroneously, to determine that a power possessed by the people as such may be surrendered or destroyed by three-fourths of the State Legislatures if two thirds of Congress shall so propose.

That is to say: Could the people, or any citizens, against their consent, be deprived of, for example, the right to trial by jury or be subjected to cruel and unusual punishment through the act of some fifteen hundred public officials constituting two-thirds of Congress and bare majorities in the Legislatures of three-fourths of the States without this Court having any right of review?

The Court in this case is presented with a momentous question. The reversal of the decision below on the ground that the Court has no power to review the proposal by Congress that any kind of an amendment shall be ratified by State Legislatures rather than by people's conventions, would open the door, under not improbable circumstances, to a quick transformation of our government from a basis

of individualism to one of communism or socialism if only about 10 per cent of fanatical voters should determine to exercise a balance of power as constituents of two-thirds of the Congress and of bare majorities in three-fourths of the State Legislatures.

At the threshold of the case lies the great question whether the people, or this Court, have any power to force the use of the secret or Australian ballot into any proposal for Constitutional amendment if they believe the vital interests of the nation require such action.

This is the fundamental issue before the Court.

When the Constitution is amended by two thirds of Congress and majorities in three fourths of the State Legislatures, *every single vote which thus changes the Constitution is or may be made a public or roll-call vote.* There is not a single secret ballot involved in either Congress or any State Legislature.

When the Constitution is to be amended by two-thirds of the Congress and by constitutional conventions of three-fourths of the States, the deciding ballots, namely, those by which the people elect delegates to the constitutional conventions, are secret or Australian ballots.

The distinction is a vital one. A Congressman's or a Legislature's vote, being a public one, may be coerced. A fanatical minority can cow him by threatening to swing away enough votes to defeat him in the next election. Thus small groups of intolerant and persevering zealots by representing the balance of power—by standing at the center of the see-saw of public opinion and swinging it this way or that—can use all the alarming leverage of modern propaganda and publicity to force their political views into the Constitution. No such dangerous forces can be brought to bear upon voters in their individual booths, marking their secret ballots. No one would call a Congressman or Legislature a free agent where his public vote will arouse a host of fanatical enemies, but a citizen in his secret voting cell is free to vote his real opinion.

The central consideration in this case is whether this Court can force the use of the secret ballot in voting upon grossly political or controversial amendments affecting peoples' powers or rights, by reviewing the action of Congress in choosing either the public ballot or the secret ballot method of constitutional amendment.

How the Question Arises

Only three great, controversial provisions have ever gotten into the Federal Constitution and thus endangered it by throwing it into the maelstrom of politics. War got two of these political provisions out of the Constitution. War got the other one into it.

Make no mistake. Politics often are embalmed into law without ceasing to be politics. The old Stamp Act was embalmed politics. The British Parliament enacted its fiat, and the American patriots brewed tea in Boston Harbor and finally rewrote the British Colonial Constitutions in the blood of the Revolutionary War.

The end of that struggle for white man's freedom merged into the beginning of the struggle for the black man's freedom. The Constitution which guaranteed the blessings of liberty to the white race forged fetters of servitude upon the black race. The Slavery provisions of the Constitution were embalmed politics. No man's conscience was stilled to rest regarding human slavery because it was enshrined in our Federal Constitution. The ferments and fevers of politics were not ended by the decision of this Court in the Dred Scott case.

The greatest war that ever shook this continent repealed the Slavery provisions of the Constitution and brought to an end some sixty years of turmoil, hatred and agitation that were hardly less devastating than war.

By a curious irony, the freeing of black men encompassed the disfranchisement of white and black women, and thus paved the way for a political struggle for women's rights which was waged for some years and terminated as an

aftermath of the World War. The Fourteenth Amendment which freed the blacks, provided that while the right to vote might not be denied to "male inhabitants" unless guilty of "rebellion or other crime," without reduced representation of the denying State, women no matter how innocent they might be of crime or rebellion could be disfranchised without penalty.

Here again was a purely political provision of our Constitution which vast and growing numbers of our citizens resented and struggled with until, during the World War, it threatened to impair our war efforts and shortly thereafter action was taken for its repeal.

The third great piece of embalmed (but very much alive) politics in our Federal Constitution, grew out of the hysteria of the World War. It was thought necessary to divert grain from the distilleries to the troops, and the 18th Amendment was preceded by a war-time prohibition act and "ratified" in the reconstruction days.

People whose power over their personal habits was sought to be surrendered to the Federal Government by vote of State Legislators, have been harangued on many occasions about their sacred duty to obey the political prohibition provisions which purport to have been written into the Constitution by about fifteen hundred harassed Congressmen and Legislators who were threatened with political assassination by anti-saloon zealots who were small in numbers but powerful in energy, perseverance, prejudice and money.

But people are wise. They know politics even when disguised as stamp taxes, or slavery "institutions" or Constitutional amendments. People know when their personal rights or powers are affected no matter how much doubt Courts may entertain.

People demand that there shall be noblesse oblige in laws; that laws which expect to be respected shall be respectable. Tyrants and tyrannical laws may coerce obedience; it is never given to them freely, and it is this spirit

which defines the difference between political and non-political laws.

Can anyone think that a law which rose in the consciences of the people and which was then proposed by Congress for ratification by either conventions or State Legislatures (because Congress knew as a piece of political wisdom that practically all law-abiding people either wanted it or would submit to it) would ever meet with the fate of the 18th Amendment?

Is it demanding too much of Constitutional common-sense to expect that Congress shall be able to distinguish a People's Power from a State's Power, and a Political Amendment from a Non-Political Amendment and act accordingly? And is it expecting too much of Constitutional common-sense for this Court to assert its right to review a Congressional error, rather than to stand by and permit that error to wrack and rend the Constitution?

The Court, it is thought, will take judicial notice of the many proofs that the 18th Amendment is a purely political provision whether it be regarded as a part or as no part of the Constitution.

The attempt of some fifteen hundred men, voting in public, and trembling in their political shoes, to require that people may purchase but shall not manufacture, sell or transport intoxicating liquor has had the following indisputable effects:

1. It has bred a host of bitter enemies and violators of the Constitution among great groups of generally law-abiding citizens who otherwise would venerate and uphold our fundamental law but who now seek to pull it down and trample upon it.

2. It has filled our country with Federal police and spies and our Federal Prisons to bursting with criminals guilty of the grave "Constitutional" crimes of making or selling or transporting (but not of purchasing or consuming) intoxicating liquors.

3. It has been the mother of rackets and a breeder of murder, assassination, corruption, bribery, smuggling, and law-

lessness on a scale of alarming and increasing proportions.

4. It has elevated the bootlegging industry into one of the largest businesses in the country and is spreading its poisons of all kinds through the veins of the country.

These grave, indescribable and increasing evils and crimes springing directly from the 18th Amendment point unerringly to the commission of some deep but undeniable error of judgment or law by Congress or the State Legislatures as well as the dragging of the Constitution down into venomous forms of politics in a vain effort to elevate the liquor traffic into the sublime regions of the Constitution, and if this is true, it is the right and duty of this Court to review and rectify the error which has been made and thus throw the matter once more back into the hands of the people where it belongs.

THE QUESTIONS

The questions which arise on this appeal from a Judgment of the District Court quashing an indictment of Messrs. Sprague and Howey for violating the Constitution of the United States by the high crime and misdemeanor of transporting beer of more than one-half of one per centage of alcohol in half-barrels, are thought to be these:

1. Is the judgment of Congress that a power reserved to the States shall be surrendered to the Federal Government by an amendment proposed for ratification by peoples' conventions, or that a power reserved to the people shall be surrendered to the Federal Government by an amendment proposed for ratification by State Legislatures, a final and conclusive judgment, or may it be reviewed by this Court and rectified by requiring that amendments affecting surrender of States' powers shall be ratified by State action and those surrendering peoples' powers or rights, shall be ratified by peoples' delegates? If the Congressional action of proposing "one or the other mode of ratification" is final and conclusive irrespective of the nature of the power or right surrendered and irrespective of whether it

belongs to or is controlled by the bodies which surrender it, that is the answer to the whole question so far as this Court is concerned and the Constitution is shoved once more down into vortex of politics. But if there are some powers or rights so sacred and fundamental, as guaranteed by the Bill of Rights, that no proposal by Congress and no ratification by State Legislatures could work their surrender, then the second question arises.

2. Does the 18th Amendment involve a surrender or nullification of powers reserved to the people by the Bill of Rights and thus requiring ratification by peoples' conventions? If the answer to this question be No, there is an end of this Court controversy at least.

The PRINCIPLES and AUTHORITIES involved are as follows:

DECLARATION OF INDEPENDENCE.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

PREAMBLE OF THE CONSTITUTION.

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

ARTICLE V OF THE CONSTITUTION.

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article (Art. I, Sec. 9, as to 'migration or importation' of slaves, and Clause 4 as to 'capital or other direct tax'); and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

ARTICLE III OF THE CONSTITUTION, Section 2-1:

"The judicial power shall extend to all cases in law and equity arising under this Constitution."

BILL OF RIGHTS, or FIRST TEN AMENDMENTS TO THE CONSTITUTION:

Article I

Prohibits the establishment of religion, and protects the freedom thereof; also the freedom of speech, press, assembly and petition.

Article II

Guarantees the right of the people to keep and bear arms.

Article III

Protects people against quartering of soldiers in time of peace et cetera.

Article IV

Secures people in their persons, houses, papers and effects against unreasonable searches and seizures, et cetera.

Article V

Protects people against double jeopardy, bearing witness against self, deprivation of life, liberty or property without due process, or taking of private property for public use without compensation, and against trial for capital offense without presentation or indictment by grand jury.

Article VI

Guarantees people right to speedy and public trial by impartial jury of State and district wherein crime was committed, information as to nature and cause of accusations, right to confront witnesses, and to have counsel.

Article VII

Guarantees right to trial by jury in controversy where value exceeds twenty dollars and protects verdicts against re-examination except according to rules of common law.

Article VIII

Prohibits excessive bill or fines and cruel and unusual punishments.

Article IX reads:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Article X reads:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article III (of the Constitution as Originally Adopted):

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish . . . .

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made,

or which shall be made, under their authority . . . to controversies to which the United States shall be a party, et cetera.

ARTICLE XVIII (AMENDMENT):

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The authorities cited are:

Hawkes vs. *Smith*, 253 U. S. 221;
Lesser vs. *Garnett*, 258 U. S. 130;
National Prohibition Cases, 252 U. S. 350.

POINT I

THE JUDICIAL POWER INCLUDES THE RIGHT TO REVIEW A PROPOSAL OF CONGRESS THAT A POWER RESERVED TO THE PEOPLE SHALL BE SURRENDERED BY ACT OF STATE LEGISLATURES

1. The Tenth Amendment specifically recognizes two classes of reserved powers:

(a) those reserved to the States
(b) those reserved to the people.

It is submitted that even if Congress so proposed, the people, by convention, would have no right to surrender

or nullify a right reserved to the State as a State, and that the State as a State would have no right to surrender or nullify a right reserved to the people as such, and that this Court would review an error of proposal.

Hawkes vs. *Smith*, 253 U. S. 221, and *Lesser vs. Garnett*, 258 U. S. 130, are thought to be pertinent. In both cases, the people, as a people, sought to disable a State, as a State, from ratifying a Constitutional amendment by act of legislature. The Supreme Court ruled in effect that the function of a State legislature in passing on a proposed amendment to the Federal Constitution, is Federal, and not subject to limitation by the people of the State.

Similarly, and conversely, it is submitted that, if a State constitution were to prohibit the people of such state from ratifying by convention an amendment regularly proposed by Congress for ratification by conventions, and without the consent of the State Legislature, it appears to be self-evident that the Supreme Court would hold that the power of the people to ratify, was a federal process and not subject to limitation by the State Constitution or the State Legislature.

2. Article V of the Constitution provides two alternative methods of ratifying an amendment proposed by Congress:

> (a) by the legislatures of three-fourths of the States.
> (b) by conventions of delegates of the people in three-fourths of the States.

In short, Article V provides a means by which a State, acting as a State, may surrender or nullify a right reserved to it as a State under the Tenth Amendment or otherwise, and Article V likewise provides a method by which the people of a State, acting as a people, through delegates elected to a constitutional convention, may surrender or nullify rights reserved to themselves as people by the Bill of Rights or other parts of the Constitution.

Surely, the existence of clearly defined State's Powers and of equally defined Peoples' Powers reserved under the

Tenth Amendment, and the existence, in Article V, of clearly defined methods by which the States as States or the people as people may surrender or nullify their reserved powers, implies a reason for the existence of such separate and distinct powers of State and people and of such separate and distinct methods of surrendering such reserved State's Powers by the States or such reserved People's Powers by the people. That reason is found in the reservation in the Tenth Amendment of States' Powers to the States and of Peoples' Powers to the people.

Suppose these clear distinctions have been dormant until now? Suppose there is no strong historical basis for these clear demarcations? Nevertheless these groups of States' Powers and of Peoples' Powers in the Constitution and of these alternative methods of surrender by the States or of surrender by the People, constitute inherent and intrinsic evidence, that the makers of the Constitution, and the people who adopted it, had in mind that the peoples' powers should only be surrendered by peoples' conventions and the States' powers by State Legislatures, if the necessity should ever arise.

The Constitution was erected on the self-evident truth that just government depends upon the consent of the governed and a suppositious case is thought to demonstrate the soundness of the present proposition.

Suppose, then, that Congress should propose an amendment, for ratification by the State Legislatures, abolishing the entire Bill of Rights—establishing a State religion, destroying all freedom of speech, press, assembly, and petition of grievances, abridging the right to keep and bear arms, quartering soldiers on the people in time of peace, legalizing unreasonable searches and seizures, abolishing trial by jury and indictments or presentments of grand juries, providing for secret trial and no right of counsel, permitting double and triple jeopardy, abolishing due process of law, legalizing cruel and unusual punishments, etc., etc., . . . —and suppose that the legislatures of three-

fourths of the States should duly ratify such amendment in the manner proposed by Congress, does any rational person suppose that this Court, when the question was raised, would content itself with the citation of *Hawke* v. *Smith*, 253 U. S. 221-226, to establish that "the method of ratification (i. e., by State Legislatures or by constitutional conventions elected by the people) is left to the choice of Congress?"

It is submitted that in any clear case wherein State legislatures endeavored, on election by Congress of that method of ratification, to surrender a true peoples' power, or of Peoples' Convention or a State Constitution endeavoring to surrender or abridge a clear States' power, this Court would enforce the articulated consistency—the dormant common sense—of the Constitution, by holding that the existence of clearly differentiatable peoples' powers and of States' powers in the Constitution and the existence of a method by which the people may surrender peoples' powers, and of an alternative method by which a State may surrender a States' power, imposed a plain, unavoidable and judicially reviewable duty upon congress to propose the States' method of surrendering States' powers and the peoples' method of surrendering peoples' powers, when proposing amendments to the Constitution.

3. If Congress should propose that an amendment which surrendered a reversed power of the States should be ratified by conventions, or that an amendment which surrendered a reserved power of the people of the several States should be ratified by the legislatures of three-fourths of the several States, the Supreme Court has power to refuse to recognize such amendment as valid as a part of the Constitution.

Such judicial veto would throw the matter back for the final determination of the people by a further amendment or ratification, according to the determination of the Supreme Court that either States' or peoples' reserved powers were being proposed for surrender.

POINT II

The 18th Amendment Involves an Attempted Surrender of Sumptuary Powers Reserved to the People and Thus Incapable of Surrender by State Legislatures

The prohibition of the manufacture, sale or transportation of intoxicating liquor for beverage purposes is a surrender or curtailment of a previously existing liberty and power of the people to make, sell and transport liquor just as much as though the Congress and the State Legislatures should by constitutional amendment attempt to deprive women of their power and right to wear corsets or to use high heel shoes.

Every evil result which has flowed from the 18th amendment—the bribery and corruption of public officers, the many murders and assassinations of and by bootleggers and racketeers, the vast profits of the outlawed liquor traffic, the smuggling operations along all our borders, the intense political agitation and hatred of the Constitution in imporant and populous states, the repeal of enforcement acts, the refusal of large numbers of good citizens to recognize the 18th amendment as anything but a political weapon aimed at them not by men who seek to curtail their own habits but merely to condemn habits they never possessed, the general condition of increasing and alarming lawlessness—all these symptoms point indisputably to the fact that the 18th amendment involved a power of the people, the surrender of which power was attempted without their consent and in violation of the Bill of Rights. People would not thus be agitated if mere powers of States as such were affected.

In the long run the rape of popular powers by Congressional and State Legislative action, will do more harm to the Constitution than to the people. If this Court shall exercise its power to insist that no political provisions infringing on the peoples' sovereignty shall be recognized as part of the Constitution unless and until ratified by con-

ventions of the people elected for the purpose, the Constitution will be kept from taking sides in seething controversies of ever increasing intensity. The people will never embalm politics in the Constitution until all the fight has gotten out of the issue to the extent that the people in three-fourths of the states, voting with secret ballots, shall regard the controversy as ended.

Strangers usually get hurt when attempting to mix-up in domestic quarrels and the Congressional error as to the proposal of the 18th Amendment for ratification by public office holders rather than by private citizens voting in secrecy, has gotten the Constitution into a similar predicament by making it attempt to say "peace, peace, when there is no peace."

And there will not be any peace until this usurpation of peoples' powers by public officials in violation of the Tenth Amendment has been defeated.

Every controversial or political provision of the Constitution has resulted in increasing storm, stress and struggle until it has been eliminated. The Revolutionary War ended the tenure of Parliamentary Laws which were backed solely by force. The War Between the States repealed the Constitutional sanctions of Slavery and the Dred Scott decision. The World War was instrumental in bringing to a climax the long struggle to free women from disfranchisement. The political struggles revolving around the 18th Amendment are rapidly assuming alarming proportions and will go to greater excesses if a fanatical minority of office holders in one-fourth of the states shall indefinitely continue to veto all efforts to "repeal" the 18th Amendment.

The remedy for all the evils brought upon the Constitution, the country, the people, the prisons, and this Honorable Court by the controversies raging around the 18th Amendment, is an effective one. It is for this Court to assert its power, right and duty to review and correct the error of Congress in proposing that some fifteen hundred

public officials voting on public roll-call and harassed by small bands of intolerant zealots wielding a balance of power between opposing parties, should surrender or usurp personal rights and powers reserved to more than one hundred million people by the Tenth Amendment.

POINT III

The Ratification of Other Amendments by Public Officials Rather Than by the Delegates of Private Citizens, Is Irrelevant and Immaterial to Points at Issue

This Court has wisely proceeded always on the policy of never deciding issues in advance of events. After a controversy has actually developed, and not until then, does this Court entertain the cause and render its judgment.

There can be no question that ratification of Constitutional amendments by public officials already convened for other purposes is simple, easy and inexpensive in comparison with the cumbersome and strange processes of peoples' conventions called to render verdicts on usually undisputed amendments.

It is confidently asserted that if other amendments proposed for ratification by Legislative action had precipitated violent and constantly enlarging political controversies, this Court would long ago have been called upon to consider whether such manifest symptoms of popular discontent and anger did not point to a usurpation by public officials of powers reserved to the people.

The spectacle of smugglers, bootleggers and bribed officials ardently supporting yet happily violating the 18th Amendment and resisting its appeal, while honorable citizens representing proven majorities in important states are reviling the Constitution, repealing the enforcement acts, and engaging in passive rebellion and nullification, is a sorry one, but is one of which the Court must take judicial notice and it is one which creates a controversy requiring adjudication in the case at bar.

Where every symptom points to violation of the spirit as well as the letter of Article V as construed if not modified by the 10th Amendment by the engrafting of the personal appetite legislation called the 18th Amendment, upon our Constitution, the duty of the Court to review the method of ratification of the 18th Amendment should not be affected in any way by the fact that other amendments, some perhaps involving peoples' powers but not necessarily any surrender or curtailment thereof, have been similarly ratified without thereafter being brought into judicial question as the outcome of what in effect is a passive rebellion in many of our great states.

CONCLUSION

The Conclusion submitted is, that States' Reserved Powers may not be surrendered by the people; that Peoples' Reserved Powers may not be surrendered by State Legislatures; that a proposal by Congress that a Peoples' Power shall be surrendered by legislative ratification is not final but is subject to review by the Supreme Court in determining the validity of such so-called amendment; that the Eighteenth Amendment is an attempted surrender or nullification of a Peoples' Power by States acting as States, and therefore is not a valid and lawful amendment; and that this Court has a duty in upholding and defending the Constitution, to review and rectify the error of Congress in dealing with a Peoples' Power, bearing constantly in mind that our Constitution was born in the blood of the Revolutionary War; that it was baptized in the blood of the War between the States; that the lives of enforcement officers and violators alike are now being lost in increasing volume throughout this nation and along all its borders in the name of the Eighteenth Amendment so-called; that the Dred Scott decision and the War of 1861-65 show that even the final judgment of the Supreme Court cannot act as a fiat when the Constitution and the liberties of men are in the maelstrom of politics and threatened rebellion; and finally

that the Eighteenth Amendment, instead of being accepted and obeyed and preserved and respected in the hearts of the people as a duly enacted and valid Constitutional rule, is becoming more and more a subject of violent political and police struggle.

A law is never a law, no matter how majestic the mode of its alleged adoption (and the Eighteenth Amendment was conceived in the hysteria of war), until the passions and the politics and the resistance and the dangerously disruptive powers of vast numbers of our otherwise law abiding citizens have finally become calmed and they have acquiesced in and accepted the new law and determined to obey it as a self-imposed habit and civic duty rather than under threat of force.

The test of a law is its ability to establish order, to promote domestic tranquility and to secure the blessings of liberty and peace to ourselves and our posterity.

By these tests, the Eighteenth Amendment stands condemned. Millions of otherwise good citizens violate it as a conscientious duty in a political contest in which only increasing resistance can prevent the loss of rights and liberties reserved and guaranteed to them by their Constitution and never surrendered by them or with their consent.

The judgment of the court below should be sustained.

Respectfully submitted,

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